HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.22470 of 2006

Dated: 05.10.2007

Between:
P. Gopalakrishna and others.

.... PETITIONER

AND

Government of A.P.
Represented by its Commissioner, Civil
Supplies, A.P., Hyderabad and others.

.... RESPONDENTS

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.22470 of 2006

ORDER:

Petitioners filed the present writ petition seeking a Writ of Mandamus to declare the notification issued by the 3rd respondent in the proceedings in Rc.No. B770/2006, dated 20.10.2006 in respect of fair price shop No. 6 of Ayyavarirudravaram village, Shop No.12 of Lingala Village and Shop No. 10 of Perikigudem-1 village of Mandavalli Mandal, Krishna District as illegal, arbitrary and contrary to the proceedings issued by the respondents 1 and 2, dated 29.6.2005, 18.10.2005 and 16.8.2005 and violative of the principles of natural justice. They also sought for a consequential direction to the respondents to consider their cases for appointment as Fair Price shop dealers as L.Rs. of the deceased dealers and to pass such other suitable orders.

It is stated that the petitioners are the legal representatives of the deceased fair price shop dealers. It is stated that the father of the first petitioner died on 17.7.2003; that the father of the second petitioner died on 6.4.2002 and the mother of the

third petitioner died on 6.6.2003. Since then, the petitioners have been pursuing with the authorities to appoint them as dealers. But, the matters had been delayed for one reason or the other on the ground that there is no urgency since no notification is issued. It is also stated that the impugned notification had been issued by the third respondent on 20.10.2006 inviting applications for appointment of fair price shop dealers ignoring the claims of the petitioners. They further alleged that the issue with regard to appointment of petitioners, who are the legal representatives of the deceased fair price shop dealers is pending consideration before the 1st respondent and the Commissioner also issued instructions to the District Collectors on 29.6.2005 to offer their remarks with regard to the conditions prescribed for transfer of the authorization in favour of the legal representatives of the deceased dealers. It appears, the District Collector, Krishna, the 2nd respondent herein has also sent his remarks to the 1st respondent on 16.8.2005. Thereafter, the 1st respondent seems to have issued proceedings dated 18.10.2005 calling upon the District Collectors to furnish certain information with regard to the vacancy position.

It is also stated that the 3rd respondent knowing fully well about these proceedings, ought not to have issued the impugned notification even before a decision is taken by the 1st respondent. Petitioners further stated that if interviews are conducted, it would affect their claims and third party rights would be created. It is also stated that as per the impugned notification, 2.11.2006 is fixed as the last date for receipt of the applications and the interviews will be conducted on 6.11.2006. They further stated that they cannot even apply for the said shops pursuant to the impugned notification, since the 3rd respondent has reserved the said shops for different categories. They further allege that even though there is no reservation, the 3rd respondent had reserved the said shops contrary to the procedure with a view to eliminate the petitioners. They further state that they are having the requisite qualifications and eligibility for appointment as dealers by way of transfer of authorization. In such circumstances, the petitioners approached this Court praying for appropriate reliefs as specified supra.

The 3rd respondent had filed counter affidavit. In para-1 of the counter it is stated that the Mandal Revenue Officers in the division furnished the vacancy position of fair price shop dealers posts in their jurisdiction. Among others, the Mandal Revenue Officer, Mandavalli has furnished ten vacancies in his jurisdiction and out of those vacancies, six posts were clear vacancies. It is also stated that as per the information received from the Mandal Revenue Officer, Mandavalli and other Mandal Revenue Officers, a notification was issued on 20.10.2006 duly inviting the applications from the eligible candidates fixing the last date of receipt of the applications as 2.11.2006. Further, as per the norms and also taking into consideration the Division as a unit, the category-wise reservation was finalized. It is further stated that in respect of the Maandavalli Mandal, six F.P. Shop vacancies were allocated, out of which, two shops are for S.Ts., 3 to B.Cs. and one for physically handicapped persons to fulfill the required reservation in the Divisional unit and accordingly, the dealerships in respect of Ayyavari Rudravaram village was allotted to physically handicapped, Perikigudem Village to B.C. and Lingala village to Scheduled Tribes. It is further stated that aggrieved by the notification, petitioners, who are the legal heirs of the permanent dealers filed the present W.P. requesting to consider them in those vacancies and also obtained stay orders. It is further stated that after the death of the three dealers, the three posts are being run by the adjacent dealers by making alternative arrangements. It is also stated that under the Rules, there is no provision to appoint legal heirs on compassionate grounds.

It is also stated that there is no provision under the A.P. State Essential Commodities Act, 2001 to appoint the legal heirs on compassionate grounds on the death of permanent dealers and hence, the request of the petitioners cannot be considered.

It is further stated that it is incorrect to say that the matter relating to their request for appointment as dealers is being delayed on one reason or other as there is no urgency for issuing the notification to fill up the vacancies of the said dealership. However, additional charge arrangements were made after the death of permanent dealers to avoid any inconvenience to the cardholders. It is stated that since there is no provision in the rules for appointing the legal heirs of the

permanent dealers as fair price shop dealers, the candidature of the petitioners had not been considered.

While referring to the contentions raised by the petitioners in para-4 of the affidavit filed in support of the writ petition, it is stated that it is incorrect to say that the impugned notification to the extent of the fair price shops referred to in the W.P. is illegal. It is also stated that the Notification was published on 20.10.2006 in accordance with the A.P.S.P.D.S. Control Order 2001 and in accordance with G.O. Ms. No.53, Consumer Affairs, Food and Civil Supplies (C.S.-I) Department, dated 6.10.2003. Further, as per the guidelines issued from time to time, the Rule of Reservation was strictly followed and there was no room to appoint legal heirs on compassionate ground even in the G.O. or Control Orders, 2001. So far as the contention of the writ petitioners with regard to appointment of L.Rs. as fair price shop dealers is pending and that the 1st respondent Commissioner called for remarks to the conditions prescribed for transfer of authorization to the L.Rs. and that the Collector has sent remarks is concerned, it is stated that it is only an internal correspondence between the administrative machineries and it does not in any way entitle the petitioners with any right to seek appointments etc. Moreover, the writ petitioners themselves admitted that orders on this issue were not issued so far. Unless specific instructions are issued by the higher authorities, the appointing authority cannot withhold filling up of these vacancies and the question of consideration of the request of legal heirs is therefore not acceptable and hence the notification is legal and as per rules.

Further, even according to the Andhra Pradesh State Public Distribution System Control Order, 2001 the authorization is not transferable to any other person. The writ petitioners cannot claim any relief without finalisation of the issue or without the orders of the Government.

It is further stated that the contention of the writ petitioners that the action of the Revenue Divisional Officer, Respondent No.3 in issuing the notification is bad is incorrect. It is also stated that there are no instructions either from the Government or from the Collector, Kirshna estopping to fill up these vacancies. Further, during the District Food Advisory Committee meetings, the matter has come up for discussion and the Committee has been insisting upon the Revenue Divisional Officers/Appointing Authorities to fill up all the vacancies of the fair price shop dealers urgently to facilitate smooth functioning of the Public Distribution System. The Notification was issued in accordance with the Rules in force in respect of the clear vacancies that arose. Further, as these F.P. shops were kept earlier under additional charge, it is causing much inconvenience to the Public Distribution System. Hence, it is necessary to fill up these vacancies immediately to facilitate smooth functioning of Public Distribution system.

It is further stated that the contention of the writ petitioners that the reservation of these vacancies to different categories is incorrect and was done without following any procedure and obviously to eliminate the petitioners is untenable and it is stated that the 3rd respondent being the appointing authority has to maintain rule of reservation by taking the Division as one unit and accordingly while taking into consideration various categories, the existing dealers and short fall in the respective categories, reservation to the vacancies now notified was arrived at in accordance with G.O. Ms. No.53, dated 6.10.2003. Hence, the notification and allocation of reservation are as per rule position. The respondent also furnished the category-wise particulars and vacancy position of F.P. shop dealers in Gudivada Division as on 6.10.2006, which reads thus:

o	Name of the Division	Total No. of F.P.Shops	Men					Women					Co Op So
			S.C.s	S.Ts	B.Cs	PHCS	O.Cs	S.C.s	S.Ts	B.Cs	PHCS	O.Cs	
	2	3	4	5	6	7	8	9	10	11	12	13	
	Gudivada	341	29	6	48	3	117	24	1	13	3	44	15

So far as the contentions raised in paras-8 and 9 of the writ petition are concerned, it is stated that all the contentions

raised therein are baseless and hence the writ petition be dismissed.

In the light of the specific stand taken by the 3rd respondent in the counter affidavit, this Court is of the considered opinion that at present the petitioners are not having any legal right whatsoever to be appointed as fair price shop dealers. However, in the light of the correspondence placed before this Court, it is seen that the issue is pending consideration before the Commissioner of Civil Supplies. Let, the Commissioner of Civil Supplies take appropriate decision in this regard in accordance with the rules within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of. No costs.

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P.S. NARAYANA,J

DATE: 5th October, 2007

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